



DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 26 and 27

[Docket No. TTB-2022-0009; Notice No. 215; Re: T.D. TTB-186]

RIN 1513-AC89

Implementation of Refund Procedures for Craft Beverage Modernization

Act Federal Excise Tax Benefits Applicable to Imported Alcohol

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Elsewhere in this issue of the **Federal Register**, by means of a temporary rule, the Alcohol and Tobacco Tax and Trade Bureau (TTB) is implementing certain changes made to the Internal Revenue Code by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Tax Relief Act of 2020), which amended the Craft Beverage Modernization Act (CBMA) provisions of the Tax Cuts and Jobs Act of 2017. The temporary rule establishes procedures for taking advantage of quantity-limited reduced tax rates and tax credits applicable to imported alcohol products. The text of the regulations in that temporary rule serves as the text of the proposed regulations. This document also proposes to amend the regulations to clarify that a foreign producer may not assign CBMA tax benefits on distilled spirits, wine, or beer unless it produces the product. In this document, TTB is soliciting comments on the regulatory amendments adopted in the temporary rule and on the amendment proposed in this notice of proposed rulemaking.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may electronically submit comments to TTB on this proposal and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2022–0009 as posted at <https://www.regulations.gov>. A direct link to that docket is available on the TTB website at <https://www.ttb.gov/laws-and-regulations/all-rulemaking> under Notice No. 186. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005. Please see the **Public Participation** section of this document for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Jesse Longbrake, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005; telephone (202) 453–1039, ext. 066.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act, which among other things amended provisions of the Internal Revenue Code (IRC) related to excise taxes on beer, wine, and distilled spirits; the section of the Tax Cuts and Jobs Act containing these provisions is referred to as the Craft Beverage Modernization Act (CBMA). Beginning in 2018, CBMA made quantity-limited tax benefits (CBMA tax benefits) available to all producers of distilled spirits, wine, and beer, domestic and foreign. The CBMA tax benefits were initially limited to calendar years 2018 and 2019 but were subsequently

extended and then made permanent by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Tax Relief Act of 2020).¹

The Tax Relief Act of 2020 also transferred responsibility for administering the CBMA tax benefits for imported alcohol from the Department of Homeland Security's U.S. Customs and Border Protection (CBP) to the Department of the Treasury (Treasury). Specifically, for alcohol entered for consumption in the United States after December 31, 2022,² importers will no longer be eligible for CBMA tax benefits when paying tax to CBP. Rather, importers will be required to pay the full tax rate to CBP and submit refund claims to Treasury to receive the lower rates. Importers will submit refund claims to TTB for the difference between the tax paid at the full rate and the amount that would have been paid if tax liability had been calculated using the tax benefits assigned to them by foreign producers.

Elsewhere in this issue of the **Federal Register**, TTB is publishing temporary regulations making amendments to parts 26 and 27 of the TTB regulations (27 CFR parts 26 and 27). The principal changes establish the procedures for taking advantage of the CBMA tax benefits applicable to imported alcohol products. The text of the temporary regulations serves as the text of

¹ See Pub. L. 115–97, sections 13801–13808 (CBMA provisions of the law commonly known as the Tax Cuts and Jobs Act); Pub. L. 116–94, section 144 (Further Consolidated Appropriations Act, 2020 extending and amending CBMA provisions); Pub. L. 116–260, Division EE, sections 106–110 (Tax Relief Act of 2020 making CBMA provisions permanent with amendments).

² TTB's temporary rule implements statutory tax refund provisions that apply to imported products "removed" after December 31, 2022. See 26 U.S.C. 5001(c)(4), 5041(c)(7), and 5051(a)(6)). TTB regulations at 27 CFR 27.48 provide that any internal revenue taxes payable on imported distilled spirits, wines, and beer upon release from customs custody are collected, accounted for, and deposited as internal revenue collections by U.S. Customs and Border Protection (CBP) in accordance with CBP requirements. There are different types of entry under CBP regulations, and "entered for consumption" refers to a type of customs entry filed to introduce the goods into the stream of U.S. commerce. Such entries are subject to applicable tax and duties. Accordingly, consistent with TTB regulations and CBP policies, TTB interprets the term "removed" as used in the CBMA tax refund statutory provisions for imported products to mean "entered for consumption." For purposes of the temporary rule, "entered for consumption" includes withdrawal from a CBP bonded warehouse for consumption.

these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

Clarification that Foreign Producers May Assign CBMA Tax Benefits Only for Products They Produce

In this document, TTB is also proposing to amend the regulations to clarify that a foreign producer may not assign CBMA tax benefits to U.S. importers in cases where the foreign producer has not produced the product. As described in more detail in the temporary rule, foreign producers assign CBMA tax benefits to U.S. importers, who then elect to take them. See 26 U.S.C. 5001(c)(3), 5041(c)(6), and 5051(a)(4). However, the IRC does not define the term “foreign producer.” The temporary rule defines the term “foreign producer” as “a foreign distilled spirits operation, wine producer, or brewer.” In the case of wine or beer produced outside the United States and imported into the United States, CBMA allows the person who produced the wine to assign the tax benefit, 26 U.S.C. 5041(c)(6)(A), and allows the brewer (i.e., the producer) to assign the tax benefit, 26 U.S.C. 5051(a)(4)(A), 5052(d) (definition of brewer).

For distilled spirits produced outside the United States and imported into the United States, CBMA allows a distilled spirits operation to assign tax benefits. 26 U.S.C. 5001(c)(3). Although the definition of “distilled spirits operation” includes activities that do not constitute production, see 26 U.S.C. 5002(a)(2), 5171(a), CBMA also states that the assignment of tax benefits for distilled spirits cannot exceed quantities *produced* by such foreign distilled spirits operation. See 26 U.S.C. 5001(c)(3)(B)(i)(I). TTB interprets this limitation to mean that a foreign distilled spirits operation cannot assign tax benefits on distilled spirits unless such operation has produced the distilled spirits. This interpretation is consistent with the same limitations imposed on foreign producers of wine and

beer. See 26 U.S.C. 5041(c)(6)(A), (c)(6)(B)(i)(I) and 5051(a)(4)(A), (a)(4)(B)(i)(I).

Therefore, in this document, TTB is proposing to update 27 CFR 27.262 to include in paragraph (c)(1) the statement that a foreign producer may not assign CBMA tax benefits on distilled spirits, wine, or beer unless it produces the product. Paragraph (c), as set forth in the temporary rule, currently addresses limitations to assignments generally, including the limitations on the overall quantities of product that may be assigned and the controlled group limitations that apply to foreign and domestic producers under common ownership. TTB is soliciting comment on this proposal because it has not been previously addressed by regulation and because this proposal may differ from CBP's administration of the CBMA with regard to certain assignments involving distilled spirits.

Public Participation

Comments Invited

TTB requests comments from interested members of the public on the proposed changes to our regulations in 27 CFR part 27, which are described in detail in the temporary rule issued in conjunction with this notice of proposed rulemaking and published elsewhere in this issue of the **Federal Register** and on the additional regulatory amendment discussed in this document. TTB is particularly interested in comments on whether TTB should propose a definition of "distilled spirits operation" consistent with the discussion of that term in this document.

Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the Regulations.gov website or via postal

mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 215 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing. If TTB schedules a public hearing, it will publish a notification of the date, time, and place for the hearing in the **Federal Register**.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, its supporting materials, and any comments TTB receives about this proposal within the related Regulations.gov docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at <https://www.ttb.gov/contact-rrd>, or by telephone at 202–453–2265, if you have any questions regarding how to comment on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Order 12866

Since the regulatory text proposed in this notice of proposed rulemaking is identical (with one exception) to that contained in the companion temporary rule published elsewhere in this issue of the **Federal Register**, the analyses contained in the preamble of the temporary rule concerning the Regulatory Flexibility Act, the Paperwork Reduction Act, and Executive Order 12866 also apply to this proposed rule.

List of Subjects

27 CFR Part 26

Alcohol and alcoholic beverages, Beer, Excise taxes, Imports, Liquors, Notice requirements, Reporting and recordkeeping requirements, Wine.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Excise taxes, Imports, Liquors, Notice requirements, Reporting and recordkeeping requirements, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR chapter I, parts 26 and 27 as follows:

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

1. The authority citation for part 26 is revised to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6038E, 6065, 6109, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

2. Add § 26.208 to read as follows:

§ 26.208 Craft Beverage Modernization Act Tax benefits.

[The text of proposed § 26.208 is the same as the text of § 26.208 in the temporary rule published elsewhere in this issue of the **Federal Register**.]

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

3. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6038E, 6065, 6109, 6302, 7805.

§ 27.221 [Amended]

4. [The amendment of proposed § 27.221 is the same as the amendment of § 26.208 in the temporary rule published elsewhere in this issue of the **Federal Register**.]

§§ 27.223 through 27.249 [Reserved]

5. [The proposed reservation of §§ 27.223 through 27.249 is the same as the reservation of §§ 27.223 through 27.249 in the temporary rule published elsewhere in this issue of the **Federal Register**.]

6. Add subpart P, consisting of §§ 27.250 through 27.268, to read as follows:

Subpart P—Craft Beverage Modernization Act Import Refund Claims

[The text of proposed subpart P, consisting of §§ 27.250 through 27.268, is the same as the text of subpart P, consisting of §§ 27.250 through 27.268, in the temporary rule published elsewhere in this issue of the **Federal Register**.]

7. Section 27.262, as added in the temporary rule published elsewhere in this issue of the **Federal Register**, is further amended by revising paragraph (c)(1) to read as follows:

§ 27.262 Foreign producer's assignment of CBMA tax benefits.

* * * * *

(c) * * *

(1) *General.* A foreign producer may not assign CBMA tax benefits on distilled spirits, wine, or beer unless it produced the product. The foreign producer may assign quantities that are limited to the number of proof gallons, wine gallons, and beer barrels in paragraph (b)(4) of this section, and also cannot exceed the quantities of the foreign producer's distilled spirits, wine, and beer that are expected to be imported into the United States during the specified calendar year by the importer receiving the assignment.

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Signed: September 14, 2022.

Mary G. Ryan,

Administrator.

Approved: September 14, 2022.

Thomas C. West, Jr.

Deputy Assistant Secretary (Tax Policy).

[FR Doc. 2022-20413 Filed: 9/22/2022 8:45 am; Publication Date: 9/23/2022]